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Supreme Court, U.S.
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No. 97-139

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

H. Beatty Chadwick, Petitioner
v.
R.D. Andrews, successor to George Hill,
Warden, Delaware County Prison, Respondent
and
Barbara Crowther Chadwick, Respondent

ON WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

REPLY TO BRIEF IN OPPOSITION FOR RESPONDENT BARBARA CROWTHER CHADWICK

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RESPONDENT'S COUNTER-STATEMENT OF THE CASE IS INACCURATE AND MISLEADING

Respondent claims to have "clearly established that Husband (Petitioner) had fraudulently transferred" and "retained control over" $2,500,000 in assets (Brief in Opposition, p.2) which the trial court ordered Petitioner to pay into a court administered account. Thus, Respondent concludes that the state court may properly imprison Petitioner who now has been imprisoned 29 months, for an indefinite period until he makes the required payment. Although Petitioner suggests that, for the reasons set forth in the Petition, his Petition for review is equally meritorious whether or not Respondent's version of the facts is correct, the record demonstrates that Respondent's version of the facts is most definitely not correct, and thus there exists an even more compelling need for the Court to clearly set forth the standards of due process which should be applied in civil contempt proceedings.

There has been no dispute that in February 1993 Petitioner paid $2,502,000 pursuant to a pre-existing joint venture contract to Maison Blanche Limited, a Gibraltar Corporation (not a partnership, as Respondent stated), which was an unrelated third party. The joint venture contract and acknowledgement of payment are part of the record. No evidence has been presented that the payee was controlled by Petitioner or that the payment was other than what it purported to be, and thus Respondent's contention that the monies were fraudulently transferred are completely without factual support.

Respondent claims that Petitioner has retained control over the monies paid to Maison Blanche Limited based upon an affidavit of an individual, unknown to Petitioner, who represented that he was a director of the company. The affidavit was admitted into evidence by the trial court over Petitioner's objection, as its authenticity, the authority of the affiant to make the affidavit on behalf of the company and the truth of the matters stated therein were not established nor was the affiant subject to cross examination.

Issues of admissability aside, the affidavit purported to set forth transfers of funds by Maison Blanche Limited following the receipt of Petitioner's payment in February, 1993. Contrary to the statements by the Respondent (Brief in Opposition, pp.1, 2), the affidavit does not state that such transfers were to any accounts in the name of or controlled by Petitioner, or made at the direction of Petitioner.

The affidavit further stated that the affiant was not aware of the receipt from Petitioner of share certificates of a value of US $532,000 which constituted a portion of Petitioner's payment. Petitioner testified that, pursuant to an agreement with the company, such certificates were delivered to the company's solicitor (not an acquaintance of Petitioner, except as to this transaction, as claimed by Respondent), who acknowledged receipt thereof. Proof of such delivery by Petitioner's broker also was a matter of record. Petitioner admitted that in April 1993 he signed documents at the request of Maison Blanche Limited to purchase as a straw party certain annuity investment contracts, which were not thereafter in his possession and in which he had no beneficial interest. Petitioner denied receiving any proceeds therefrom. Respondent's

claims that Petitioner redeemed the contracts and directed that the funds be returned to him are completely unsupported by the record, and the statement that Respondent "established" such facts is simply incorrect.

When on July 22, 1994, the trial court ordered Petitioner (Petition, B-5) to pay $2,500,000 into a court administered account, no findings of fact were made. Petitioner testified that he did not control the funds paid to Maison Blanche Limited and was unable to comply. This evidence was uncontroverted at the time the trial court adjudicated Petitioner in contempt on November 2, 1994 (Petition, B-1) the court did not receive any evidence as to Petitioner's ability to comply or whether compliance had occurred. Indeed, the trial court imposed no condition, upon the fulfillment of which Petitioner could be released from imprisonment; the order of imprisonment simply provides for Petitioner's incarceration "until a further hearing is held." (Petition, B-2).

Respondent states, incorrectly, that a "series of contempt hearings" were scheduled by the trial court prior to the order which directed Petitioner's imprisonment. (Brief in Opposition, P.3) A hearing was held August 29, 1994 on Respondent's petition for contempt. The trial court disposed of the petition and adjudged Petitioner in contempt at that time, but imposed no sanction. On October 18, 1994 the trial court held a hearing in the underlying divorce proceeding which concerned the sale of real property and the attachment of trust proceeds payable to Petitioner. The contempt was not considered. Prior to October 31, 1994 the trial court, on its own motion, notified Petitioner that a hearing on a "petition for contempt" would be held on October 31, 1994. There was no such

petition, however, and Petitioner had no other notice as to the purpose of the hearing, the remedies sought, or the bases therefor.

When Petitioner's appeal of the adjudication of contempt and imprisonment was quashed by the Pennsylvania Superior Court because the adjudication was deemed interlocutory, Petitioner sought collateral relief through petitions, the denial of which are the subject of the Petition for review. The Respondent points out that the trial court, in denying Petitioner's application for habeas corpus, remarked as to the "evidence which clearly showed that husband (Petitioner) had a clear ability to comply with the trial court's July 22, 1994 Order." (Brief in Opposition, P.5). In fact, however, the record is bare of <u>any</u> evidence in the collateral relief proceedings that Petitioner controlled the funds at issue or could comply with the trial court's order to pay them. There simply was no basis in fact for the trial court's conclusions on this point. Upon appeal, the Pennsylvania Superior court compounded this error by declining to disturb the findings of the trial court in the absence of bias, prejudice, or ill will. (Petition, A6, 16)

> <u>The sixth and fourteenth amendments to the United States Constitution should require a state court to extend a person confined indefinitely, now 29 months, the rights afforded to a criminal accused.</u> Respondent's argument to the contrary is repugnant to fundamental notions of due process.

Respondent's position is based upon the assumption of a material fact, which has not been proven of record, namely, that Petitioner controls and therefore is capable of paying the monies the trial court has ordered him to pay, where a person

is unable to perform an act ordered by a court, clearly the court may not hold him in contempt for non-performance McPhaul v. United States, 364 U.S. 372, 81 S.Ct.138 (1960). The difficulty is that the determination of Petitioner's ability to comply, that fact upon which Petitioner's liberty now depends, has been made by the same court that ordered him to make the payment and adjudicated his contempt and imprisonment.

The Court long has been concerned about the potential for abuse of the contempt power. Harris v. United States, 382 U.S.162, 86 S.Ct. 352 (1965); Bloom v. State of Illinois, 391 U.S. 194, 88 S.Ct. 1477 (1968). In United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S. Ct. 2552 (1994) the Court extensively reviewed the possibilities for abuse in a civil contempt proceeding. The Court pointed out that unlike areas of the law where a legislature defines both the sanctionable conduct and the penalty, "civil contempt proceedings have the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." For this and other reasons relating to the severity of the penalty, discussed infra, the Court concluded that a jury trial was required. In the case for which review is sought the factual issue like the issues in United Mine Workers clearly was not decided by an unbiased factfinder. Moreover, the mischief was compounded by the refusal of the reviewing court to disturb the fact finding of the trial judge in the absence of bias, prejudice, or ill-will. (Petition, A-6, 16)

Once Respondent makes the unsupported assumption that the Petitioner is able to comply with the trial court's order and has been adjudicated in contempt by reason of his failure to do so, Respondent then concludes that the contempt at issue is "civil", as opposed to

"criminal" contempt. Thus, Respondent maintains that Petitioner's case is governed by the rule set forth in Gompers v. Bucks Stove & Rance Co., 221 U.S. 418, 31 S.Ct. 492 (1911), namely that where contempt is criminal, or intended to punish for past conduct, criminal due process rights apply, but where contempt is civil, or intended to coerce future conduct, criminal due process rights do not apply.

Petitioner submits that, as a result of the Court's decision in United Mine Worker's, supra, the applicability or not of criminal due process rights depends not so much upon the intention of the court which imposes the sanction for contempt as upon the nature and severity of the sanction. In United Mine Workers, the court held that a labor union sanctioned with substantial fines for the alleged violation of a labor injunction which the trial court characterized as civil penalties, was nevertheless entitled to a jury trial and other rights afforded to a criminal accused because the sanction was a criminal sanction.

The Respondent incorrectly characterizes this case as one involving criminal contempt and thus declares it inapposite because the labels "criminal" and "civil" have such different consequences the parties to the United Mine Workers case attempted to analyze the facts there involved on one or the other side of that issue. Ultimately, the Court determined it was unclear whether the sanction was civil based upon the intended purpose. However, the Court concluded that the serious nature of the fines imposed made the proceedings subject to the protections afforded a criminal defendant. It was in that context that the Court stated "We conclude that the serious contempt fines imposed here were criminal and could not be imposed absent a jury trial." Petitioner submits that the lengthy and

indefinite imprisonment to which he has been subject clearly is a "serious" sanction, even more so than the fines involved in United Mine Workers and that the Court should review the case at issue to so provide and to make clear to lower courts that due process requires criminal rights to be afforded where severe sanctions are imposed, regardless of the characterization of the contempt as "civil" or criminal under the traditional analysis.

> The eighth and fourteenth amendments to the United States Constitution should prohibit a state court from imprisoning a civil contemnor for an indefinite period, now 29 months in duration. To suggest, as Respondent does, that a state may imprison a person adjudicated in contempt for a lengthy and indefinite period conflicts with notions of fundamental fairness and due process.

The Respondent has relied upon the decision of the Court in Uphaus v. Wyman, 360 U.S. 72 (1959) which held that imprisonment for contempt to coerce the production of documents was not a violation of the eighth amendment. Unlike the Petitioner, the contemnor in that case was not confined for 29 months. Moreover, the court in Uphaus analyzed the facts according to the civil-criminal contempt model, and concluded that the contempt involved there was, by definition, not punitive because it was "civil". The court's decision in United Mine Workers, supra, suggests that this analysis may no longer be acceptable, and that a lengthy imprisonment causes the sanction to be criminal and punitive, as it is in fact.

The Court has recognized the right to be free of physical restraint as a fundamental right and

has required states to present very clear justification for any imprisonment other than imprisonment which occurs by reason of a criminal conviction. Foucher v. Louisiana, 504 U.S. 71, 112 S. Ct. 1780 (1992); Kansas v. Hendricks, ____U.S.____, 117 S. Ct. 2072 (1997).

Petitioner has duly raised the constitutional issues below, and any suggestion by Respondent to the contrary is incorrect.

The Respondent suggested (Brief in Opposition, pp.6,7) that Petitioner has "failed to exhaust his state court remedies and to allow the Pennsylvania Supreme Court the opportunity to rule on these issues." This statement was made in the context of describing the denial by the U.S. District Court for the Eastern District of Pennsylvania of Petitioner's petition for writ of habeas corpus for failure to exhaust state remedies. Thus, Petitioner suggests that Respondent may have confused the requirements of 28 U.S.C.§2254 with those applicable to the review of a state court judgment as is involved in the Petition before the Court.

The Federal Constitutional issues presented in the Petition have been raised in the courts below, including the petition which sought discretionary review by the Supreme Court of Pennsylvania. The Respondent does not dispute that, and therefore there is no issue as to the jurisdiction of the Court in the matter. The Respondent was referring to a second appeal to the Pennsylvania Superior Court of a new habeas corpus denial filed while the petition for review of the Pennsylvania Superior Court judgment. (The one which is the subject of the instant petition) was pending before the Pennsylvania Supreme Court. The second appeal to the Pennsylvania Superior

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Court is not involved in this Petition.

CONCLUSION

For the reasons set forth in the Petition and this Reply, Petitioner urges that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

H. Beatty Chadwick

H. Beatty Chadwick, Petitioner

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